BOOK REVIEWS.

THE EQUALITY OF STATES IN INTERNATIONAL LAW. By Edwin DeWitt Dickinson, Professor of Law in the University of Michigan. Harvard Studies in Jurisprudence, Volume III. Harvard University Press, Cambridge, Mass., 1920, pp. xiii, 424.

This, the third volume in the Harvard Studies in Jurisprudence, is an admirable example of the value of those learned monographs which appear in such profusion from the presses of the States and Germany but are so conspicuous by their rarity in Great Britain. Dr. Dickinson, who is Professor of Law in the University of Michigan, has made a real contribution to clear thinking, and his work should be carefully studied by all who are concerned in international organization. We are still kept back by the premature birth of the attempt to apply in practice the abstract idea of the equality of states in international relations. As Dr. Dickinson says: "It is a curious circumstance that in the law of nations what would seem to be the natural course of development has been turned about. Through the powerful influence of certain theories . . . an absolute equality of capacity for rights among international persons was established as a fundamental postulate when the science was still in a primitive stage. The subsequent history of international relations shows a continuous struggle to impose limitations upon that equality."

Text-book writers upon international law are peculiarly prone to repeat the statements of their predecessors without verification. They have fallen into a careless way of attributing to Grotius the theory that states have equal rights by the law of nations. Now Grotius was a practical man, not a mere theorist, and Dr. Dickinson shows convincingly that Grotius was not the father of this theory. The true parents were Grotius' successors, the naturalists, Pufendorf, Barbeyrac, Rutherforth and their followers, who derived their inspiration from Hobbes and, unlike Grotius, identified the law of nature and the law of nations. "An illuminating chapter might be written," says Dr. Dickinson, "on the contributions of Thomas Hobbes to the unreality of international law." The naturalists were more concerned with the perfecting of an abstract idea than with the practical realities of their times. International law, on the other hand, is becoming increasingly positive. Dr. Dickinson has traced the historical development of the theory with great thoroughness and made a subject which in many hands would become dull, exceedingly interesting. Incidentally it may be stated that he does full justice to the contribution made by Moser to the conception of international personality.

There has been so much confused thinking upon the topic that Professor Dickinson does well continually to reiterate that equality in the sense of equality before the law or the equal protection of the law must on no account be confused with equality of rights or, more strictly, equality of capacity of rights. Equality before the law is essential to the very idea of international legal relations; it is presupposed in the writings of Grotius

as it must be presupposed in the writings of every international lawyer. But it is quite consistent with inequality of capacity of rights. As our author points out (p. 336), "no civilized state has ever tried to combine universal suffrage, the folk-moot and the *liberum veto*." It is quite impossible to give practical application even in municipal law to equality in the second sense; yet it is a claim to this kind of equality which is persistently made by some of the smaller states at Hague Conferences and elsewhere.

Dr. Dickinson makes a distinction between the legal equality of states in their mutual relations and their political equality (*e. g.* as regards representation, voting and contributions) in whatever pertains to the development of international organizations (*e. g.*, conferences, administrative unions and tribunals). This distinction he calls fundamental. Two very useful chapters are devoted to the consideration of the internal and external limitations upon the legal equality of states, the first arising from the organization of the state, the latter from the relationships into which it has entered with other members of the society of nations. The book was written during the war, but Dr. Dickinson in an admirably exhaustive supplementary chapter discusses the equality of states in the Treaty of Paris. He points out that that Treaty (or treaties) takes account in several instances of internal limitations upon equality; this recognition adds practical significance to the equality of states as a legal principle. Full recognition is of course given to external limitations, and a new international relationship is created by the system of mandates. In thus frankly facing existing inequalities a substantial contribution has been made to the development of a system of rules which must become a more efficient instrument for the preservation of order and justice in the international community of the future. "Equality of legal capacity is the ideal towards which the practical rules of the law of nations can only approximate" (p. 152). It is valuable as an ideal; but, at present, advance towards the goal can only be made by frank recognition that it has not yet been reached.

Equal political capacity is, according to Dr. Dickinson, evidenced by (1) equality of voting strength; (2) the requirement of unanimity; (3) the limitation of Congresses, etc., to a decision (to use an expression of Dr. Scott's) *ad referendum*. To the present writer it seems that political equality is compatible with a Congress consisting of delegates with plenary powers who shall be bound by a majority vote. And it is difficult to assent to Dr. Dickinson's contention that the principle of equality is violated by giving the self-governing dominions of the British Empire a separate vote; for they are in effect independent states. India and the Crown Colonies stand on a different footing. These being the tests which Dr. Dickinson applies, he rather cynically but quite truthfully points out that conferences based on equality have been concerned in the last century chiefly with technical, administrative or non-political affairs, but those conferences which have been deemed of vital importance have met upon a basis which denies political equality.

Dr. Dickinson's conclusions will carry general assent. Equality before the law is absolutely essential to a stable society of nations; it is consistent with inequalities of representation, voting power and contributions in inter-

national relations. Equality of political capacity is on the other hand not essential. "Conceding that equality of capacity for rights is sound as a legal principle, its proper application is limited to rules of conduct and to the acquiring of rights and the assuming of obligations under those rules. It is inapplicable in its very nature to rules of organization. Insistence upon complete political equality in the constitution and functioning of an international union, tribunal or concert is simply another way of denying the possibility of effective international organization." (p. 336). The outstanding feature of the Peace of Paris in this respect "is its extensive disregard for the traditional conception of political equality" (p. 348). If the League of Nations makes good, "the traditional conception of political equality among states will become obsolete" (p. 365), but the biggest step in history will have been made towards true equality by the substitution of orderly process for self-help—in the language of Erasmus, "the irrational and doubtful decision of war." In the light of these conclusions it is interesting, but not altogether reassuring, to learn that M. Barbosa, the most vigorous exponent of unqualified political equality at the Second Hague Peace Conference, has just been elected at the top of the poll to a seat in the International Court of Justice.

Dr. Dickinson's book is in fine a weighty and readable contribution to the study of the whole law of international persons and status. And its utility is considerably increased by an exhaustive bibliography and a good index.

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TRUST ESTATES AS BUSINESS COMPANIES. By John H. Sears. Vernon Law Book Company, Kansas City, Missouri, 1921. Second Edition, pp. xx, 782.

In a partnership the partners control and manage the business of the firm and are personally liable for the firm debts. In a corporation the stockholders, through directors chosen by them, manage the business of the corporation without liability for the corporate debts. In a "business trust" the trustees manage the business of the trust for the benefit of cestuis who are not personally liable for the debts of the trust. The last mentioned form of organization has long been domiciled in Massachusetts, and has of late begun to spread throughout the country. Of course the idea is nothing new. For a long time certain unincorporated associations, not amounting to partnerships, have conducted their affairs through trustees vested with the legal title to the association property. Notable instances of such arrangements are the Inns of Court, the London Stock Exchange, Lloyd's Insurers and countless social clubs. Also sometimes the assets of an unsuccessful business have been transferred to trustees for the purpose of carrying on the business for the benefit of its creditors, as well as for the original owners of such business. So, too, occasionally a testator has provided in his will that his trustees to whom he has bequeathed the property employed in